(6)

No. 91-905

In the Supreme Court of the United States

OCTOBER TERM, 1991

WILLIAM P. BARR, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., PETITIONERS

v.

JENNY LISETTE FLORES, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: DECEMBER 9, 1991
CERTIORARI GRANTED: MARCH 2, 1992

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* The opinions of the court of appeals and district court are printed in the appendix to the petition for a writ of certiorari and have not been reproduced here.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Docket No. 85-4544

JENNY LISETTE FLORES, ET AL., PLAINTIFFS

v.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., DEFENDANTS

RELEVANT DOCKET ENTRIES

DATED	NR	PROCEEDINGS
		* * * * *
7-11-85	d	1. Fld compt. Issd summs. Case may be ref'd to Mag Penne for dscvry.
7-18-85	mc	2. Pltf's second set of exhibits.
7-12-85	mc	3. Pltf's 1st set of exhibits.
		* * * * *
7-30-85	mc	20. Pltf's 3rd set of exhibits.
		* * * * *
11-8-85	mc	50. Pltf's Fourth set of Exhibits.
		* * * * *
3-19-85	kb	76. 5th set of exhs. pltfs
		77. 5th set of exhs. pltfs
		78. 5th set of exhs. pltfs
		79. 5th set of exhs. pltfs
		* * * * *
3-27-86	kb	88. 6th set of exhs, pltfs
		* * * * *

DATED	NR		PROCEEDINGS
4-23-83	kb	97.	7th set of exhs. pltfs
		* * * * *	
5-29-86	le	125.	pltfs' 8th set exht 82-83
		* * * * *	
8-11-86	lpc	142.	ORD re class CERTIF that except as agst Corrections Corp. of America, actn shl be maintained as class actn.
		* * * * *	
4-21-87	fbr	159.	Plft's 9th set of exhbts part 1 exhbts 85-86.
		160.	Plft's 9th set exhbts part 2; exhbts 87 to 89.
		161.	Plft's 9th set of exhbts part 3; exhbts 90 to 93.
		162.	Plft's 9th set of exhbts part 4; exhbts 94 to 95.
		163.	Plft's 9th set of exhbts part 5; exhbts 96 to 118.
		* * * * *	
5-11-87	fbr	171.	Plft's 10th set of exhbts. (exhbts 121 to 140).
		* * * * *	
5-24-88	wh	256.	ORD & JGMNT tht pltf mot S/J is Granted & deft mot S/J DENIED; tht defts shll release any minor othrwise eligible fr release on bond or recognizance to his parents, gurdian etc, any minor tkn into custody shll be

DATED	NR	PROCEEDINGS
		afforded admin hrg to detrmn probable cause fr his arrest etc (ENT 5-24-88) mid copies prties/w/note
		* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 88-6249

JENNY LISETTE FLORES, ET AL., PLAINTIFFS-APPELLEES

v.

EDWIN MEESE, III, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., DEFENDANTS-APPELLANTS

RELEVANT DOCKET ENTRIES

DATED	FILING-PROCEEDINGS
	* * * * *
7-25-88	DOCKETED CAUSE AND ENTERED APPEARANCE OF COUNSEL. Sent appellant(s) civil appeals docketing statement. (cck)
	* * * * *
6-20-90	FILED OPINION: REVERSED REMANDED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. WALLACE, author; FLETCHER, dissenting; George.) FILED AND ENTERED JUDGMENT. [88-6249] (ck)
	* * * * *
8-9-91	FILED OPINION: The majority panel opinion is VACATED and the order of Judge Kelleher is AFFIRMED in all respects. (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Heard en banc; Mary M. SCHROEDER, author.) FILED AND ENTERED JUDGMENT. [88-6249] (sw)

DATED	FILING-PROCEEDINGS
	* * * * *
12-23-91	MANDATE ISSUED [88-6249] (dmd)
3-6-92	Filed Supreme Court order (SC Date: 3/2/92): The petition for writ of cert. is GRANTED. [88-6249] (sw)

18 U.S.C. § 5034

Duties of magistrate

The magistrate shall insure that the juvenile is represented by counsel before proceeding with critical stages of the proceedings. Counsel shall be assigned to represent a juvenile when the juvenile and his parents, guardian, or custodian are financially unable to obtain adequate representation. In cases where the juvenile and his parents, guardian, or custodian are financially able to obtain adequate representation but have not retained counsel, the magistrate may assign counsel and order the payment of reasonable attorney's fees or may direct the juvenile, his parents, guardian, or custodian to retain private counsel within a specified period of time.

The magistrate may appoint a guardian ad litem if a parent or guardian of the juvenile is not present, or if the magistrate has reason to believe that the parents or guardian will not cooperate with the juvenile in preparing for trial, or that the interests of the parents or guardian and those of the juvenile are adverse.

If the juvenile has not been discharged before his initial appearance before the magistrate, the magistrate shall release the juvenile to his parents, guardian, custodian, or other responsible party (including, but not limited to, the director of a shelter-care facility upon their promise to bring such juvenile before the appropriate court when requested by such court unless the magistrate determines, after hearing, at which the juvenile is represented by counsel, that the detention of such juvenile is required to secure his timely appearance before the appropriate court or to insure his safety or that of others.

DEPOSITION OF ROBERT J. SCHMIDT

* * * * *

REQUEST NO. 34:

Mr. Ernest E. Gustafson, the INS District Director for Los Angeles personally decided in August, 1985 to release a minor who was eight months pregnant to the custody of an aunt or cousin. She was flown to Phoenix at government expense to live with her mother who is illegally in the United States. In May or June, 1985, Mr. Gustafson personally authorized the release of a 17-year-old girl who was very ill to the custody of a relative in Washington, D.C. In July or August 1985, Mr. Gustafson personally authorized the release of a girl, age 15, who had a one-year-old child, to the custody of her husband, age 20.

77 CR 509-10.

DEPOSITION OF HAROLD EZELL

* * * * *

Q. Before this memorandum was issued, what was the policy in the Western Region with regard to release on bond of unaccompanied minors?

A. I don't really recall exactly what it was at that point. The reason that I felt it was necessary was I felt I had a moral responsibility to make sure that those children were not released to just anybody who says that I am a nice guy and I want to take care of this child. I feel at the time we got enough milk cartons with pictures on them and we don't need any more. We had an issue that arose in San Diego over a child, which quite interestingly the Court upheld our position at that point and your folks didn't pursue that lawsuit, but that was the policy that I felt was fair to the child. That's what it is today.

Q. So, is it your testimony you don't know what the policy was before you issued this memo?

* * * * *

* * * * *

Q. To your knowledge, has a minor released by the Immigration and Naturalization Service to a parent or legal guardian been harmed or neglected in any way?

A. I don't know that.

Q. Before issuing this policy memorandum, again, referring to Plaintiffs' Exhibit 17, did you attempt to find out whether any individual, any unaccompanied minor released by the Immigration and Naturalization Service to a nonparent or nonguardian have been harmed or neglected in any way?

A. Not to my knowledge.

Q. Before issuing the memorandum, Plaintiffs' Exhibit 17, did you conduct any study or any investigation as to what impact this policy memorandum would have on the length of time unaccompanied minors would be detained?

A. No.

Q. Before issuing this policy memorandum, Plaintiffs' Exhibit 17, did you make any efforts to investigate or do a study of the conditions existing in facilities where unaccompanied minors are detained?

A. No, I did not.

* * * * *

Q. Now, before issuing this policy memorandum, Plaintiffs' Exhibit 17, did you attempt to investigate or study how long it takes to get a guardian appointed in the Superior Courts of California?

* * * * *

THE WITNESS: No, I didn't.

* * * * *

To your knowledge, had the agency ever been sued because it released an unaccompanied minor to an individual that harmed or neglected that minor?

A. No to my knowledge.

Q. Since this memorandum was issued, has the agency ever been sued because it released a minor to someone who harmed or neglected that minor?

A. Not to my knowledge.

* * * * *

76 CR 25-27

* * * * *

Q. So, just to make sure the sole purposes of this policy then are two: to protect the welfare and well-being of the minor and protect the Service from possible legal liability?

A. That is correct.

* * * * *

Q. Now, to your knowledge, how is an unaccompanied minor advised that he or she will be released to in most cases no one other than a parent or legal guardian?

A. I don't know.

Q. How is an attorney who represents a detained unaccompanied minor advised that the minor will be released generally only to a parent or legal guardian?

A. I don't know.

Q. To your knowledge, are there any uniform proceedings in the Western Region by which such notice will be given?

A. No.

* * * * *

76 CR 45-46

* * * * *

Q. Did anyone advise you as to what practices, for example, of the State juvenile justice systems or Federal Courts when they encounter a juvenile or with regards to releasing?

A. No.

* * * * *

76 CR 56

* * * * *

Q. Is part of the task of the District Directors to locate, apprehend and return aliens who are unlawfully in the United States?

A. Yes.

Q. Do they also set the amount of bond?

A. Yes.

Q. The Chief Patrol Agents have also the responsibility to apprehend aliens that they believe are aliens who are unlawfully within the United States?

A. Yes.

* * * * *

76 CR 67

* * * * *

The question is: why have you not so implemented a practice of providing some form of education at other detention sites?

A. As a list of reasons, we are not required to. It is not our function. It is costly. One would have to address being educated in English, Spanish, Chinese or other language.

* * * * *

76 CR 403

DEFENDANT'S RESPONSE TO REQUEST FOR ADMISSIONS

* * * * *

REQUEST FOR ADMISSION NO. 22:

Admit that the INS has made no study comparing whether a juvenile released to a parent or legal guardian is more or less likely to be harmed or neglected than if released to someone other than a parent or legal guardian.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Admitted. The INS presumes that harm or neglect will be less likely if a minor is in the custody of a person such as a parent or legal guardian, who has a legal obligation to care for the child.

* * * * *

78 CR 1238-39

DEPOSITION OF ANA MARIA MARTINEZ PORTILLO

* * * * *

Q. What happened after Mr. Hughes left?

A. They searched me and they undressed me very ugly.

Q. Who do you mean when you say "they"?

A. The ones that work there.

Q. In asking these questions, I am not trying to embarrass you. I am trying to find out what happened.

Who was in the room when you were searched?

A. Just a lady.

Q. One lady?

A. Yes.

Q. Was this the same lady who searched you the time before?

A. No. It was a different one.

Q. Did she touch you in the same ways that the lady had done the time before?

A. No.

Q. Did she touch you at all?

A. She didn't touch me but she had me undress everything.

Q. Including your underwear?

A. Yes. I was very embarrassed.

Q. The she looked at you with no clothes on?

A. Yes.

Q. And she didn't touch you?

A. No.

Q. Did she ask you to turn around?

A. Yes.

Q. And then she told you to put your clothes back on?

A. Yes.

Q. And that was the end of it?

A. Yes. They did it three times that way.

Q. That same day?

A. No. Separate days.

Q. Was it after visits?

A. One time when Mr. Alba arrived and another time and two times when the attorney.

Q. Was it Mr. Hughes both times?

A. Yes.

Q. It wasn't his assistant?

A. No. When they did the first time, I told him that I wasn't going to go anywhere and he told me why and I told him because they undressed us very ugly.

Q. What do you mean "very ugly"?

A. Well, I felt very badly.

Q. She didn't touch you?

A. No.

Q. Was she angry?

A. No.

Q. Did she shout at you?

A. Yes.

Q. What did she shout?

A. Since I didn't want to undress, she told me—she obligated me and threatened me.

Q. She said you had to?

A. Yes.

* * * * *

* * * * *

0059 10:45:47 05/23/86
FM:DIDIR JINS BALTIMORE, MARYLAND
TO:COMMR COCOU JINS WASHINGTON, D.C.
DJJIER
BT
UNCLAS
ATT: PAUL W. VIRTUE, COCOM
BEKEB COCOU 5/15/86. FLORES ET AL V. MEESE ET AL.
PRIOR TO R.M. KISOR'S MEMORANDUM DATED 3/19/86, THIS DISTRICT POLICY FOR RELEASING AS JUVENILE DETAINEE WAS PURSUANT TO POLICY MEMORANDUM CO-242.1 P DATED 4/4/81. JUVENILE WAS RELEASED TO PARENT, FAMILY MEMBER OR A RESPONSIBLE ADULT.
BT

* * * * *

163 CR 1209

* * * * *

0024 17:29:08 05/23/86
FM DIDIR JINS EL PASO TX
TO ROCOM (RODDP) JINS DALLAS TX

BEJEK 05/16/86

UNACCOMPANIED JUVENILES WITH NO EXISTING EQUITIES IN THE UNITED STATES SUCH AS PARENT, SISTER, BROTHER, AUNTS, UNCLES, ETC., ARE HANDLED WITH THE COOPERATION OF THE FOREIGN GOVERNMENT CONSUL WHERE ARRANGEMENTS ARE MADE ACCORDING TO THE OUTLYING INSTRUCTIONS OF THAT FOREIGN CONSUL.

WHEN UNACCOMPANIED JUVENILES ARE BONDED OUT BY SOME PERSON ALLEGING RELATIONSHIP RESIDING IN ANOTHER DISTRICT, THE RELATIONSHIP IS VERIFIED BY THE OFFICE ACCEPTING BOND AND INSTRUCTIONS ARE OBTAINED AS TO RELEASE TO EITHER THE PROPER RELATION OR ATTORNEY. ALL RELATIONSHIPS ARE VERIFIED BY NOTORIZED AND EXECUTED AFFIDAVITS WITH SUPPORTING, IDENTIFYING DOCUMENTS ESTABLISHING THAT SUCH A RELATIONSHP [*sic*] EXITS AND THE PARENTS HAVE GIVEN WRITTEN, NOTORIZED PERMISSION AS TO THE CUSTODY OF THE CHILD.

WHEN UNACCOMPANIED JUVENILES ARE RELEASED ON BOND WITH NO RELATIVES EXISTING IN THE UNITED STATES, THE JUVENILE IS TURNED OVER TO THE ATTORNEY REPRESENTING THE ALIEN OR WHOEVER HAS SUBMITTED PROPERTY EXECUTED G-28 ON THE JUVENILE'S BEHALF OR HIS AUTHORIZED PARALEGAL.

* * * * *

163 CR 1213

DEPOSITION OF KIM CARTER HENDRICK

* * * * *

Q. Would it be fair to say that prior to the Ezell policy the practice was to require a responsible adult even though he or she was not a parent or legal guardian?

A. Yes.

* * * * *

162 CR 915

DEPOSITION OF ROBERT J. SCHMIDT

* * * * *

A. Oh, the whole range of problems that the policy addresses, simply put, if we were less restrictive upon who we would allow juveniles to be placed with, it certainly would be advantageous and decrease our detention costs and detention space utilization, but would the adverse factors off balance it?

Q. What were those adverse factors that were discussed, either with Miss Calhoun or with Mr. Brian or Miss Higgins or with the General Counsel's office?

A. The possibilities of liability to the government in placing a child in an improper environment, which covers a vast range of adverse things that could occur, the affect on how frequently or infrequently the juvenile would then reappear for further proceedings, the absence or increase of deterrent effect which my result, and if every juvenile apprehended is routinely turned over to anyone who claims them, would that set up a syndrome by which more and more juveniles would come because there would be no deterrence to coming. They would get exactly what they want.

All those balancing factors were—as any decisions and policies that we discuss are considered.

Q. In terms of the liability issue, in any of your discussions, was there reference to any case in which the release of a minor to a person other than a parent or legal guardian had resulted in any type of claim against the government as a result of any mistreatment experienced by that minor?

A. I don't think any actions filed were discussed.

Q. To your knowledge, have there ever been such actions filed?

A. By that, do you mean filed as a result of placing a child with someone, other than the parent or guardian and a lawsuit filed as a result of it?

Q. Or a federal tort claim act filed.

A. Not that I'm aware of.

* * * * *

159 CR 25-26

* * * * *

Q. Prior to the issuance of the Kisor Memorandum, was any effort made by the agency to determine whether a minor released to an adult other than a parent or legal guardian was more or less likely to appear at future proceedings?

A. I know of no study.

* * * * *

159 CR 39

* * * * *

Q. Are you aware of any educational instruction which has been provided to any minors detained in western region?

A. Of a structured type, I am aware of none.

Q. Are you aware of any written INS policy which requires or suggests that a minor detained in the western region for more than any particular length of time should receive education instruction?

A. When you put it in the context of policy, I know of none.

Q. Are you aware of any written memorandum or directive of the agency requiring or suggesting that a minor detained for longer than any particular period of time be provided education and instruction?

A. I'm aware of none.

* * * * *

Q. Are you aware of any contract which requires that a contract facility provide education to minors detained for longer than a set period of time, other than the El Paso facility?

A. As you phrase the question, I have—I know of none.

Q. Is it the position of the INS that it is permissible to allow the commingling of detained minors with unrelated detained adults?

A. As you raise the question, it is my understanding that that is acceptable to the service under proper restraints.

Q. And by proper restraints, do you mean supervision by the contract facility or INS processing facility?

A. That's what I mean.

Q. Are you aware that in contract facilities in the western region, some of the minors share sleeping quarters with unrelated adults?

A. I'm aware of some incidents where some juveniles have shared sleeping quarters with unrelated adults,

* * * * *

159 CR 83-84

* * * * *

DIRECTLY NORTH OF THAT ON THE NORTH END THROUGH ANOTHER LOCKED SET OF GATES IS A SHADY AREA APPROXIMATELY 40 YARDS WIDE AND 60 YARDS LONG. AND, YES, THEY ARE ALLOWED ESSENTIALLY TO DO WHATEVER THEY WANT. SOME OF THE LITTLE KIDS PLAY IN THE DIRT, SOME OF THE WOMEN WILL TAKE THEIR CHAIR OUT AND SIMPLY SIT IN THE SHADE OR IN THE SUNSHINE. SOMETIMES THEY'LL TAKE LIKE A TOWEL AND SPREAD IT OUT AND PLAY CARDS OUT IN THE SUN. SOMETIMES THEY GO OUT THERE AND LET THEIR TONGUE HANG OUT IN THE HEAT.

BUT ESSENTIALLY THEY'RE ALLOWED TO DO WHATEVER THE VARIOUS RESIDENTS WANT TO DO, AND OUR AGE AND SEX POPULATION CHANGES SO OFTEN, WE MAY HAVE FOUR OR FIVE PEOPLE, FOR INSTANCE, PLAYING A TYPE OF SOCCER IN THE LONG AREA OR, IF WE HAVE NO BOYS, WE MAY HAVE GIRLS PLAYING JUMP ROPE. JUST ANY VARIETY OF THING. I GUESS YOU WOULD SAY KIND OF LIKE A SCHOOL YARD. IT DEPENDS ON THE ENTHUSIASM AND INGENUITY OF THE RESIDENT.

* * * * *

159 CR 201

DEPOSITION OF JERRELL A. SPRINKLE

* * * * *

Q. WELL, WHAT IS THE PRACTICE OF THE SUPERIOR COURT, IF THERE IS ANY POLICY, REGARDING APPOINTMENT OF TEMPORARY GUARDIANS TO MINORS IN I.N.S. DETENTION?

A. IT'S GENERALLY THE PRACTICE TO DENY EX PARTE TEMPORARY GUARDIANSHIPS FOR MINORS IN I.N.S. DETENTION.

* * * * *

163 CR 1138-39

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 85 4544-RJK (Px)

JENNY LISETTE FLORES, ET AL., PLAINTIFFS

vs.

EDWIN MEESE, III, ET AL., DEFENDANTS

[FILED AUG 11, 1986]

ORDER RE CLASS CERTIFICATION
[Proposed (amended)]

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Attorneys for Plaintiffs

Pursuant to Federal Rules of Civil Procedure 23(b)(2), plaintiffs move this Court for an order certifying this action as a class action. Having considered the briefs, declarations, and other evidence submitted by both sides, and the argument of counsel at the June 2, 1986, hearing on said motion, the Court finds as follows:

1. the class as defined below ("the class") is so numerous that joinder of all member is impracticable.

2. there are questions of law or fact common to the class;

3. the claims of the representative parties are typical of the claims of the class;

4. the representative parties will fairly and adequately protect the interest of the class; and

5. the federal defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Accordingly, IT IS HEREBY ORDERED that, except as against defendant Corrections Corporation of America, this action shall be maintained as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following classes:

1. All persons under the age of eighteen (18) years who have been, are, or will be arrested and detained pursuant to 8 U.S.C. § 1252 by the Immigration and Naturalization Service ("INS") within the INS' Western Region and who have been, are, or will be denied release from INS custody because a parent or legal guardian fails to personally appear to take custody of them.

2. All persons under the age of eighteen (18) years who have been, are, or will be arrested and detained pursuant to 8 U.S.C. § 1252 by the Immigration and Naturalization Service ("INS") within the INS' Western Region and who

have been, are, or will be subjected to any of the following conditions:

a. inadequate opportunities for exercise or recreation;

b. inadequate educational instruction;

c. inadequate reading materials;

d. inadequate opportunities for visitation with counsel, family, and friends;

e. regular contact as a result of confinement with adult detainees unrelated to such minors either by blood, marriage, or otherwise;

f. strip or body cavity search after meeting with counsel or at any other time or occasion absent demonstrable adequate cause.

Dated: August 8, 1986.

/s/ ROBERT J. KELLEHER
United States District Judge

Presented by:

James B. Morales,
one of the attorneys
for plaintiffs.

/s/ JAMES B. MORALES

DEPOSITION OF WILLIAM B. ANDERHOLT

• • • • •

Q. Is the E.C.I. facility licensed by the state of California as a juvenile detention facility?

A. No.

Q. Does the E.C.I. facility have any accreditation by, for example, the A.C.A. or any of the other associations as a juvenile facility?

A. I don't believe so.

Q. In your manuals and policy and procedures manuals, I believe we had talked earlier about whether there is anything in the contract or the statement of work regarding special treatment for juveniles, and you mentioned segregation of the population and recreational activities. Is there anything in addition to those two items that are not contained in the statement of work that are contained in your policy or procedures manual or other policy or procedure statements you may have?

A. No.

Q. Other than instructions three times a week in English, is there any other educational instruction that occurs in facilities in which juveniles are allowed to participate?

A. I don't believe there are any other additional resources except for educational television. There is television in each apartment which have educational stations in different languages including Spanish.

Q. Why don't you provide the juveniles there with additional educational instruction?

A. Because the movement is very—it's very difficult. The movement basically, on the average, the movement of our population probably would be, for a juvenile, in my opinion, would be on the average, one month.

Q. So the average juvenile stays there approximately one month; is that right?

A. That would be my—the average they would be approximately one month, I would say.

Q. Have you had or are you personally aware of any juveniles that have spent more than one month in the facility?

A. Yes, I am.

Q. In your experience, to the best of your recollection, what is the longest time a juvenile has spent there?

A. Almost one year. It will be one year July 7, 1986.

* * * * *

160 CR 399-400

DEPOSITION OF ALEXANDRIA WHITEHOUSE

* * * * *

Q. How long does it take, generally, from the filing of a petition seeking the appointment of a temporary guardian to hear and decide that request for appointment of a temporary guardian?

A. Well, they file the petition at the filing window, they come up to the probate attorney's office, and depending on how many people are ahead of them, they can be heard right away.

Q. Does the court do any kind of an investigation of the proposed guardian's qualifications before adjudicating an application?

A. No. It relies on the verified petition of the petitioner.

* * * * *

Q. What sort of representations have to be made in that verified petition?

163 CR 1158-59

171 CR 553 et seq.

INSTITUTE OF JUDICIAL ADMINISTRATION
AMERICAN BAR ASSOCIATION

JUVENILE JUSTICE STANDARDS

STANDARDS RELATING TO

* * * * *

These difficulties are caused or compounded by profound defects in the system of juvenile justice itself: in the inadequacy of the information and the decision-making process that leads to detention; in the delays between arrest and ultimate disposition; and in the lack of visibility and accountability that pervades the process.

In contrast to the pretrial stage, much greater care and sensitivity is usually devoted to the postadjudicative disposition, its facilities, and its alternatives to incarceration. The result, paradoxically, is considerably less detention under better conditions once the juvenile justice system ceases to presume that the juvenile is innocent.[5]

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[5] Several studies have indicated that far more juveniles are detained prior to adjudication than are incarcerated afterwards. See NCCD, "Juvenile Detention" in "Correction in the United States," 13 *Crime & Delinq.* 1, 11, 15, 36 (1967) (of 409,218 juveniles detained in 1965, only 242,275 were either committed after disposition to a facility or placed on probation); Ferster, Snethen, and Courtless, "Juvenile Detention: Protection, Prevention, or Punishment?" 38 *Fordham L. Rev.* 161 (1969) (in the jurisdictions examined, few of the detainees were ultimately removed from the community following disposition: Mass., 25.9 percent; Ill., 22 percent; Ohio, 19.5 percent; Texas, 9.7 percent; "Affluent County," 25 percent).

The paradox noted in the text has been observed by one court:

> Traditionally, individuals accused of violations of law—whether they be defendants in adult criminal proceedings or respondents in proceedings technically denominated delinquency—have, curiously enough, fared far worse in matters of detention and treatment than those already adjudged guilty or "involved." Those convicted of offenses are normally assigned to institutions that are reasonably spacious, where there are ongoing programs of education and recreation, and where , at least on a relative basis, a reasonable number of counselors and other professionals are present to assist with problems and to help on the road to rehabilitation. On the other hand, those merely accused of wrongdoing are typically detained in structures that are little more than cages, with scarcely any programs, professional help, or space for anything but sleeping, eating, and an occasional walk in a narrow prison yard. To anyone looking at this situation without the blinders of the knowledge of "how things have always been" this must seem like an odd reversal of how things should be. Perhaps at a time when service of a sentence meant the rock pile of hard labor there was an advantage to the idleness of the pretrial prison. But now, when a primary aim of institutions for the adjudicated delinquent or the sentenced offender is rehabilitation, and when the programs designed to accomplish this process have become relatively humane—inadequate though they may sometimes be—the accused who is merely awaiting his trial, and who in the meantime rests securely on his presumption of innocence, is usually held under conditions far more barbaric than those prevailing at institutions for individuals whose guilt has already been adjudicated by a court or jury. While the historical and theoretical reasons for this anomaly are not difficult to understand, the situation still makes no sense. In the Matter of Savoy, Juvenile Case No. J-4808-70, at 30-31 (D.C. Super. Ct. January 11, 1973) (C.J. Greene).

The basis of reform in this area should be a new focus on the importance and integrity of pretrial decision making, and on the development of an informed, speedy, and responsible process. Standards must be formulated and rules imposed to limit the process, to the extent possible, to performing the historic function of bail in the criminal process—ensuring the presence of the accused at future court proceedings. The standards also need to recognize and regulate candidly the function that bail in the adult criminal process plays in fact, but declines to acknowlege in law—that some arrested persons are too obviously guilty and apparently too dangerous to others to be released by any reasonable judicial officer.

This volume proceeds on the premise that the danger of too much detention before trial or disposition currently outweighs the dangers—both for juveniles and society—of too much release. As a result, the standards here seek to curtail severely—but not eliminate—the discretion to detain that presently characterizes the system. Reducing such discretion is to be accomplished by three methods: narrowing the criteria for permissible detention; reducing permissible delay in the system; and increasing accountability for and review of decisions that curtail interim liberty. The volume incorporates these features in a step-by-step description of the pretrial and predisposition process. Basic principles and general procedural standards are followed by individual sets of standards applicable to each agency and official responsible for the sequential stages of contact with the juvenile.

1. Definitional issues.

Two key definitional issues should be settled at the outset:

A. Pretrial release vs. interim status.

The juveniles who comprise the potential detention population addressed in this volume come from three separate stages of the juvenile justice process: preadjudication (before trial), predisposition (after conviction but before sentence), and preimplementation of the dispositional decision (until the sentence is put into effect).[6] The volume thus governs processes beyond the pretrial stage to which the ABA, Standards for Criminal Justice, *Pretrial Release* (1968) (hereinafter cited as ABA Standards, *Pretrial Release*) were directed. The term "pretrial" detainee is, accordingly, inaccurate to describe the many juveniles in detention whose cases have already been adjudicated, but whose disposition is either undecided or unimplemented. As a substitute, the term "interim" is used

[6] *See* commentary to Standard 2.1.

herein to refer to the entire portion of the juvenile process from the point of arrest until the carrying out of a dispositional placement, *i.e.*, to all decisions relating to release, control, and detention made during this period.[7]

B. Criminal vs. noncriminal offenses.

Only arrests on charges that would constitute violations of the criminal law if committed by adults are included within this volume.[8] Juveniles taken into custody for conduct or status that would not be an adult crime, such as running away or incorrigibility, or who are in custody in a dual situation, such as a runaway arrested for burglary, are not part of the group addressed directly by these standards.

The implications of this limited applicability are important. Various studies have indicated that about half of all juveniles held in interim detention are charged with "juvenile" or noncriminal offenses.[9] These standards are

[7] *See* Standard 2.1.

[8] Standard 1.1.

[9] Ferster, et al., *supra* n. 5 at 195: Institute of Government, University of Georgia, "Regional Youth Development Center Study" 112-113 (1972); *D. Beale & Schneider, Juvenile Justice in New Jersey* 33 (1973); "Hidden Closets" 41 (1975). One commentator has made the following observations:

> In most major cities, the nerve center of the juvenile justice system is the temporary center for juveniles. In Cook County, Illinois, this situation is the Arthur J. Audy Home for Children. Although it is supposed to provide only temporary shelter for children awaiting trial on delinquency charges, as a matter of fact most children there either have committed very serious criminal offenses such as murder or armed robbery or are simply runaway or "neglected." A boy or girl who has committed a run-of-the-mill offense is normally allowed to go home if his parents will accept him, so the Audy Home houses children caught by both ends of the Juvenile Court net—the very bad and those whose parents do not want them. *P. Murphy, Our Kindly Parent—The State: The Juvenile Justice System and How it Works* 108 (1974).

therefore directly applicable only to the remaining half of the population of detention centers across the country. This does not, however, reduce the significance of this volume. On the contrary, the standards set out herein should become the foundation for standards dealing with juveniles held for noncriminal conduct. Indeed, standards applied to such juveniles, who by definition, present less of a risk to society, should restrict the use of detention even more than the standards in this volume.

II. Reform themes.

A. Restrictive detention criteria.

Restricted use of detention for juveniles is at odds with the traditions of juvenile justice. The juvenile court has historically been called upon to respond to all types of juvenile behavior—criminal and noncriminal alike—that parents could not handle. The extremely broad discretion vested in courts that stand as *parens patriae* has resulted in detention criteria and practices that permit incarceration to "protect" the misbehaving as well as the runaway or neglected juvenile. This is one explanation for the contrast between the restrictive detention criteria proposed in this volume and the broad, discretionary criteria of previous model codes and statutes. It is not a complete explanation, however, for some codes apply very broad criteria to juvenile criminal offenders alone.

Earlier codes and standards did not exhibit the sharp clash between the concepts of *parens patriae* and due process that has begun to characterize developments in juvenile justice.[10] These codes emphasized the supremacy of the

[10] *See* Rosenheim, "Detention Facilities and Temporary Shelters," in *Child Caring: Social Policy in the Institution* 253 (Pappenfort, Kilpatrick, & Roberts eds. 1973); E. Schur, *Radical Nonintervention: Rethinking the Delinquency Problem* (1973); Wald, "Pretrial Detention

former, although detailed procedures to reduce the use of detention began to evolve in the 1950s. Typically, however, the codes used general and imprecise phrases to grant broad discretion to detain. The "Standard Juvenile Court Act," published in 1959 by the National Probation and Parole Association (NPPA), predecessor of the National Council on Crime and Delinquency (NCCD) (hereinafter cited as "Standard Act"), permitted detention if the child's "immediate welfare" or "the protection of the community requires that he be detained." Section 16. This standard was tightened somewhat in 1961 when NCCD published its "Standards and Guides for the Detention of Children and Youth," separating the consideration of criminal and noncriminal behavior by making eligible for "secure" facilities (the only ones defined as "detention") only those juveniles "apprehended for delinquency" who (1) "are almost certain to run away;" (2) "are almost certain to commit an offense dangerous to themselves or to the community;" or (3) "must be held for another jurisdiction." Section 17.

"The Legislative Guide for Drafting Family and Juvenile Court Act," published in 1969 by the Children's Bureau of the Department of Health, Education and Welfare (hereinafter cited as "Legislative Guide"), permits detention (1) "to protect the person or property of others or of the child," (2) to protect the child if he lacks anyone "able to provide supervision and care for him," and (3) "to secure his presence" in court. Section 20(a). The criteria incorporated in Section 14 of the "Uniform Juvenile Court Act," drafted by the National Conference of Commis-

for Juveniles," in *Pursuing Justice for the Child* 119 (*Rosenheim* ed. 1976); Kent v. U.S., 383 U.S. 541 (1966); In re Gault, 387 U.S. 1 (1967); In re Winship, 397 U.S. 358 (1970). *But see* Long v. Powell, 388 F. Supp. 422, 429 (N.D. Ga. 1975) (depriving juvenile of rights he or she would receive as an adult is a denial of equal protection where no benefit received by juvenile).

sioners on State Laws in 1968 and approved by the American Bar Association the same year (hereinafter cited as "Uniform Act"), are substantially the same as those in the "Legislative Guide."

In its 1973 report, "Corrections," the National Advisory Commission on Criminal Justice Standards and Goals also distinguished between "detention" and other forms of "nonsecure residential care," and further recommended that noncriminal behavior be eliminated from the jurisdiction of the juvenile court. But in defining criteria for the detention decision, no attempt was made to identify the characteristics of the juvenile or the alleged crime which might be relevant to that decision. To discourage unnecessary detention, Standards 8.2 and 16.9 simply recommended that detention (1) "be considered as a last resort where no other reasonable alternative is available," and (2) that it "be used only where the juvenile has a parent, guardian, custodian, or other person able to provide supervision and care for him and able to assure his presence at subsequent judicial hearings."

The criteria for detention found in state statutes are hardly ever more specific than those recommended in the model codes, and are sometimes more vague. Juvenile court rules adopted in Minnesota referred to "the immediate welfare of the child" and to his "protection" without further elaboration, as justifying detention.[11] A Nevada statute, although containing some specific criteria, permitted determination if release was "impracticable or inadvisable."[12] Detention was permitted in New Jersey "if the nature of the offense requires" it.[13] The statutes of every state contain some sort of catch-all phrase which,

[11] Minn. Stat. Ann. Juv. Ct. R. of P. Rule 7-1(1) (1969 Supp.).

[12] Nev. Rev. Stat. § 62.170(2) (1973).

[13] N.J. Stat. Ann. § 2A:4-32 (1954).

by creating discretion, opens wide the door to detention.[14]

Some recent studies have exhibited a trend toward detention criteria that would effectively limit discretion to detain. The 1973 report, "Courts," published by the National Advisory Commission on Criminal Justice Standards and Goals recommends criteria that in some respects resemble guidelines in the present volume. These recommendations are not an official standard, however, but appear in the commentary to Standard 14.2 on "Intake, Detention, and Shelter Care in Delinquency Cases":

[14] Ferster, et al., *supra* n. 5 at 164-167. Another interesting method for limiting detention to all but the most compelling circumstances is described in the court order dated December 19, 1972, issued by Judge Tom Dillon of the Fulton County (Atlanta, Georgia) Juvenile Court. The full text of that order included as Appendix A to the volume. The order sets a rigid maximum on the number of juveniles who may be held in the detention center, and then permits detention on the basis of a priority system. Thus, only the most serious cases are likely to result in detention because of the limited space available in the detention center.

This method could pose disadvantages. It would be unfortunate if the order were interpreted to permit detention in low priority situations if space were available in the detention center, even though other alternatives exist. Unless the detention facility were consistently filled to capacity with serious cases, detention of juveniles who would not otherwise be detained would be a possibility. The focus ought to be on whether detention is justified in each instance, rather than on whether the facility is overcrowded.

A second implication of the order is that juveniles falling within a high priority situation *should* be detained. There is no apparent pressure to search for alternatives to incarceration for these juveniles, and detention might, under this scheme, become automatic. Unless high priority categories are narrowly circumscribed, unnecessary detention may remain commonplace.

Yet, despite these theoretical criticisms, the Judge's order has had significant success:

> The most amazing fact about Judge Dillon's order has been the success it has achieved. . . . In 1972, the last year before the

> Prehearing detention should not be authorized unless the child is an escapee from either an institution for delinquent children or a penal institution; is alleged to be delinquent by reason of having committed an offense against a person that resulted in the victim requiring medical attention for his injuries; or has been found delinquent three or more times within the last year or at least five times within the past 2 years.[15]

Ferster and Courtless[16] suggest criteria which are similarly specific, but more comprehensive. Separate criteria are outlined for secure and nonsecure (shelter care) detention. Each set is based almost entirely on concrete and readily identifiable facts about the juvenile. Automatic secure detention is recommended for the following juveniles:

1. Out-of-state runaways.
2. Escapees from institutions for delinquents or criminals.
3. Children accused of offenses against persons when the victim required medical attention for his injuries.
4. Juveniles accused of felonies who have more than one prior court referral for running away.

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order went into effect, the total number of child days in the Child Treatment Center was 52,339. The average daily populatio.. was 142. In 1973, total child days were 30,217, a 57 per cent drop. The first six months of 1973 look even better, with an average daily population of 73. Collins, "One Solution to Overcrowded Detention Homes," 25 *Juv. Justice* 45, 49 (1974).

The author notes that in 1974, the Summit County Juvenile Court Center in Akron, Ohio, began a similar practice, with similar success. *Id.*

[15] "Courts" 297.

[16] "Juvenile Detention in an Affluent County," 6 *Fam. L. Q.* 3 (1972).

5. Those accused of selling addictive drugs.[17]

Discretionary detention would also be permitted for juveniles accused of crime who "have had three prior delinquency adjudications or five or more adjudications within the last two years."[18]

The 1975 report by California's Department of Youth Authority, "Hidden Closets: A Study of Detention Practices in California," is the latest example of the trend toward narrow detention guidelines. The study's advisory committee suggests three detention criteria, each of which is set out below in full text:

> [1] Detention to Guarantee Minor's Appearance
>
> No minor shall be detained to ensure his court appearance unless he has previously failed to appear, and there is no parent, guardian, or responsible adult willing and able to assume responsibility for the minor's presence.[19]

This formulation, like that of Ferster and Courtless and the National Advisory Commission, defines "likelihood of flight" not simply a guess about the future but as involving a finding that the juvenile fled the jurisdiction on a previous occasion.

> [2] Detention for Minor's Own Protection
>
> If protection of the child is the sole issue in cases where a petition has been filed under Section 602, Welfare and Institutions Code, secured detention may not be used unless the child's release presents an urgent or immediate danger to the minor's physical safety.[20]

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[17] *Id.* at 31. The full text of the authors' suggested detention criteria is included as Appendix B to this volume.

[18] *Id.*

[19] "Hidden Closets" 60.

[20] *Id.*

The emphasis on immediacy and the *physical* safety of the juvenile marks an important advance over broader definitions in other model codes. The "Hidden Closets" advisory committee reasoned as follows:

> Too often a minor's detention is justified on the basis that he will get into further trouble if he is released, and therefore detention is somehow "protecting" him from his own irresponsibility. This is a totally unacceptable reason for detention. Consideration of this factor would certainly be valid at the dispositional hearing, but there is no justification for denying liberty prior to trial on the basis that "maybe" the child will get into further difficulty and compound his unfortunate circumstances.[21]

This rationale is persuasive, and supports Standards 5.7 and 6.7 of this volume on protective custody and detention.

[3] Detention for Protection of Others

> Pretrial detention of minors whose detention is a matter of immediate and urgent necessity for the protection of the person or property of another shall be limited to those charged with an offense which could be a felony if committed by an adult and the circumstances surrounding the offense charged involved physical harm or substantial threat of physical harm to another.[22]

The "Hidden Closets" commentary to this recommendation state:

> Law enforcement officers, probation intake workers, and judges and referees have free rein to decide when a child is considered "dangerous" to the public. There

[21] *Id.* at 60-61. *See also* the commentary to Standard 3.3.

[22] *Id.* at 63.

are few written guidelines; there are no restraints. *Any* child, regardless of his age, offense, or history of past behavior, may be considered "dangerous" under present laws.

Worse, there is no accountability. A decision-maker may actually believe a youth to be "dangerous" and order him detained, but he is not required to identify this as his reason for detention. He is only required to certify that "continued detention is a matter of immediate and urgent necessity for the protection of the child or the person or property of another." His real reason for detention may be cloaked by the "protection of the child" issue.

None but the most naive would suggest that our present diagnostic tools are so sharp that we can predict with accuracy who will or will not commit an offense within a two-week time span, the period of time normally required to conduct an investigation for the adjudication hearing.[23]

The detention criteria developed in the present volume are similarly narrow and specific. In a number of respects they are more restrictive than in any of the codes and commentaries referred to above. General terms that confer broad discretion to detain have been replaced by standards that specify the relevant facts a decision maker must find in order to impose detention. The standards undertake to define the best interests of the juvenile and society, and to gear those definitions to the varying time and resources available to successive decision makers in the process.

For example, the arresting officer is required by Standard 5.6 to release all juveniles charged with offenses that

[23] *Id.* at 61-62. Others have noted that "dangerousness" is indeed difficult to predict. Ariessohn and Gonion, "Reducing the Juvenile Detention Rate," 24 *Juv. Justice* 28, 32 (1973).

would be misdemeanors if charged against an adult, except when the juvenile is in a fugitive status, or in physical or medical emergency situations. Severe limitations on the discretion to detain apply both to the juvenile facility intake official, who makes the initial decision to detain, and to the juvenile court. A strong presumption against detention is applicable in every case. This is implemented by barring interim detention unless the case involves an alleged criminal offense that would be a felony for an adult and, if proven, is likely to result in the commitment of the juvenile to a security institution *and* the juvenile falls into one of three categories specified in Standard 6.6 A. 1.: a. the crime charged is a class one juvenile offense involving violence; b. the juvenile is a fugitive from an institution; or c. the juvenile has compiled a demonstrable recent record of willful failure to appear at juvenile proceedings.

If none of these criteria is satisfied, the intake official and court may guard against an interim status risk only by means of conditions, supervision, or control short of detention. On the other hand, if the requirements of Standard 6.6 are met, detention may be ordered only upon a hearing that confers necessary rights and finds probable cause as provided in Standard 7.6, and exhausts the less restrictive alternatives of Standard 6.6 C.

The limited detention criteria contained in Standard 6.6 will no doubt generate an unavoidable but constructive tension with other standards in the volume. While on one hand this standard seeks to reduce detention to the point where only juveniles with very serious potential for interim flight or violence could be detained, other standards (*e.g.*, 3.4, 6.6 C. 3 and 10.3) simultaneously and somewhat inconsistently press for the use of nonsecure facilities whenever possible for persons who are detained. In other words, if properly and rigorously applied, Standard 6.6 tends to eliminate the need for nonsecure detention facilities for juveniles charged solely with criminal conduct. This does not mean, however, that nonsecure facilities would have no function in juvenile justice, for the extensive noncriminal jurisdiction of the juvenile court will continue the need for such facilities.

B. Reduced delay.

Delay in the processing, adjudication, and disposition of criminal and juvenile cases compounds the disadvantages of detention, increases the risks of nonappearance and antisocial conduct if the juvenile is released, and is harmful to the interests both of the accused and the community. A number of states and commentators have addressed these problems. Nineteen states require a judicial detention hearing within a limited time following arrest.[24] Each of the model codes sets limitations on the time a child may be detained (a) prior to an adequate petition being filed with the court, and (b) prior to a court order of detention. Each code states these requirements somewhat differently:

"Legislative Guide":

(a) Petition to be filed within twenty-four hours of admission detention. § 23(a)(1).

(b) Court detention hearing to be held within twenty-four hours after petition is filed. § 23(a)(2).

"Uniform Act":

(a) Petition to be filed "promptly." § 17(b).

(b) Hearing to be held "promptly," at least within seventy-two hours after admission to detention. § 17(b).

"Standard Act":

(a) Peition to be filed within twenty-four hours after admission to detention. § 17.2.

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[24] M. Levin & R. Sarri, "Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States" 30 (National Assessment of Juvenile Corrections 1974).

(b) Court order to be issued within twenty-four hours after filing of petition. § 17.2.

"Model Rules":[25]

(a) Petition to be filed prior to detention hearing. Rule 16.

(b) Hearing to be held within forty-eight hours after admission to detention *or* on the next court day following admission. Rule 15.

The National Advisory Commission's "Corrections" volume limits detention prior to the first judicial hearing to "over-night." Standards 8.2 and 16.9.

Extending further into the interim process, eleven states have enacted time limits on detention prior to adjudicatory hearings.[26] However, there appear to be no limits applicable to the final stages of the process: disposition and placement. Difficulties both in determining a proper disposition, and in implementing that decision, frequently cause juveniles to remain in detention for extended periods.[27] The adjudicatory and dispositional delays are so extensive in New York City that one court ruled in 1970 that the facilities in which these juveniles are detained should be governed by the same "right to treatment" standards applicable to "long-term detainees" at correctional facilities. *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1970).

The difficulty with decisions of this kind is that they may push treatment programs into predisposition stages of the juvenile system and thereby tend to institutionalize and legitimate the unwarranted detention that already exists. Rather than impose treatment on delayed-disposition

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[25] NCCD, "Model Rules for Juvenile Courts" (1969).

[26] Sarri, *supra* n. 1 at 33; Levin & Sarri, *supra* n. 24 at 31.

[27] Wald, *supra* n. 10 at 126.

juveniles, a failure to complete the case within prescribed time limits should require release. The rationale for this conclusion has been succinctly stated by Patricia Wald:

> The curse of juvenile courts has always been their lack of appropriate disposition resources for the variety of problem children they handle. The availability of detention facilities for holding juveniles indefinitely in lieu of a proper final placement thus has proved a convenient device for avoiding reform. Therefore, postadjudication and postdisposition detention must be strictly limited. After detention of (at most) a few weeks, release or transfer to a permanent placement should be mandatory. If a juvenile justice system in fact has no resources to treat or rehabilitate, the dilemma ought to be faced in open court and the juvenile released, if no proper placement is possible. A juvenile judge should not be allowed to feed the illusion, by recommending the placement or committing to an agency, that something is actually going to happen if it is not. Deadlines and absolute bars to detention may seem arbitrary, yet it is striking how frequently detention personnel ask for such limitations, realizing that they cannot cope with an unending stream of detainees.[28]

To abbreviate detention during the entire interim process, and to limit the risks inherent in release, the standards in this volume require that all juvenile cases be processed at each stage within very brief, specified periods, each of them including weekends and holy days. The time limits are as follows:

1. arrest—release within two hours, or transportation to a juvenile facility (Standard 5.3);

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[28] *Id.* at 126-27.

2. intake—release or petition for detention to be filed within twenty-four hours (Standard 6.5);

3. hearing—if custody continues, hearing to be held within twenty-four hours of filing of petition (Standard 7.6);

4. review—detention decision to be reviewed by the court every seven days (Standard 7.9);

5. adjudication and disposition—cases dismissed with prejudice if:

a. adjudication is not completed within thirty days of arrest if the juvenile is in a release status, and within fifteen days of arrest if the juvenile remains in detention for more than twenty-four hours following a court order of detention; or

b. final disposition is not determined and carried out within thirty days of adjudication if the juvenile is released, and within fifteen days of adjudication if the juvenile remains in court ordered detention following adjudication. These latter time constraints may be extended or waived only in limited and specified circumstances (Standard 7.10);

6. appeal—decision within ninety days when juvenile held in detention (Standard 7.14).

* * * * *

PART II: DEFINITIONS

2.1 Interim period.

The interval between the arrest or summons of an accused juvenile charged with a criminal offense and the implementation of a final judicial disposition. The term "interim" is used as an adjective referring to this interval, *e.g.*, "interim status," "interim liberty," and "interim detention."

2.2 Arrest.

The taking of an accused juvenile into custody in conformity with the law governing the arrest of persons believed to have committed a crime.

2.3 Custody.

Any interval during which an accused juvenile is held by the arresting police authorities.

2.4 Status decision.

A decision made by an official that results in the interim release, control, or detention of an arrested juvenile. In the adult criminal process, it is often referred to as the bail decision.

2.5 Release.

The unconditional and unrestricted interim liberty of a juvenile, limited only by the juvenile's promise to appear at judicial proceedings as required. It is sometimes referred to as "release on own recognizance."

2.6 Control.

A restricted or regulated nondetention interim status, including release on conditions or under supervision.

2.7 Release on conditions.

The release of an accused juvenile under written requirements that specify the terms of interim liberty, such as living at home, reporting periodically to a court officer, or refraining from contact with named witnesses.

2.8 Release under supervision.

The release of an accused juvenile to an individual or organization that agrees in writing to assume the responsi-

bility for directing, managing, or overseeing the activities of the juvenile during the interim period.

2.9 Detention.

Placement during the interim period of an accused juvenile in a home or facility other than that of a parent, legal guardian, or relative, including facilities commonly called "detention," "shelter care," "training school," "receiving home," "group home," "foster care," and "temporary care."

2.10 Secure detention facility.

A facility characterized by physically restrictive construction and procedures that are intended to prevent an accused juvenile who is placed there from departing at will.

2.11 Nonsecure detention facility.

A detention facility that is open in nature and designed to allow maximum participation by the accused juvenile in the community and its resources. It is intended primarily to minimize psychological hardships on an accused juvenile offender who is held out-of-home, rather than to restrict the freedom of the juvenile. These facilities include, but are not limited to:

A. single family foster homes or temporary boarding homes;

B. group homes with a resident staff, which may or may not specialize in a particular problem area, such as drug abuse, alcohol abuse, etc.; and

C. facilities used for the housing of neglected or abused juveniles.

2.12 Regional detention facility.

A detention facility that serves a geographic area of sufficient population to require a maximum daily capacity for that facility of twelve juveniles.

2.13 Citation.

A written order issued by a law enforcement officer requiring a juvenile accused of violating the criminal law to appear in a designated court at a specified date and time. The form requires the signature either of the juvenile to whom it is issued, or of the parent to whom the juvenile is released.

2.14 Summons.

An order issued by a court requiring a juvenile against whom a charge of criminal conduct has been filed to appear in a designated court at a specific date and time.

2.15 Treatment.

Any medical or psychiatric response to a diagnosis of a need for such response, including the systematic use of drugs, rules, programs, or other measures, for the purpose of either improving the juvenile's physical health or modifying on a long-range basis the accused juvenile's behavior or state of mind. "Treatment" includes, among other things, programs commonly described as "behavior modification," "group therapy," and "milieu therapy."

2.16 Testing.

The use of measures administered to the accused juvenile for the purpose of:

A. identifying medical or personal characteristics, the latter including such things as knowledge, abilities, aptitudes, qualifications, or emotional traits; and

B. determining the need for some form of treatment.

2.17 Parent.

Any of the following:

A. the juvenile's natural parents, stepparents, or adopted parents, unless their parental rights have been terminated;

B. if the juvenile is a ward of any person other than his or her parent, the guardian of the juvenile;

C. if the juvenile is in the custody of some person other than his or her parent whose knowledge of or participation in the proceedings would be appropriate, the juvenile's custodian; and

D. separated and divorced parents, even if deprived by judicial decree of the respondent juvenile's custody.

2.18 Final disposition.

The implementation of a court order of

A. release based upon a finding that the juvenile is not guilty of committing the offense charged; or

B. supervision, punishment, treatment, or correction based upon a finding that the juvenile is guilty of committing the offense charged.

2.19 Diversion.

The unconditional release of an accused juvenile, without adjudication of criminal charges, to a youth service agency or other program outside the juvenile justice system, accompanied by a formal termination of all legal proceedings against the juvenile and erasure of all records concerning the case.

PART III: BASIC PRINCIPLES

3.1 Policy favoring release.

Restraints on the freedom of accused juveniles pending trial and disposition are generally contrary to public

policy. The preferred course in each case should be unconditional release.

3.2 Permissible control or detention.

The imposition of interim control or detention on an accused juvenile may be considered for the purposes of:

A. protecting the jurisdiction and process of the court;

B. reducing the likelihood that the juvenile may inflict serious bodily harm on others during the interim period; or

C. protecting the accused juvenile from imminent bodily harm upon his or her request.

However, these purposes should be exercised only under the circumstances and to the extent authorized by the procedures, requirements, and limitations detailed in Parts IV through X of these standards.

3.3 Prohibited control or detention.

Interim control or detention should not be imposed on an accused juvenile:

A. to punish, treat, or rehabilitate the juvenile;

B. to allow parents to avoid their legal responsibilities;

C. to satisfy demands by a victim, the police, or the community;

D. to permit more convenient administrative access to the juvenile;

E. to facilitate further interrogation or investigation; or

F. due to a lack of a more appropriate facility or status alternative.

3.4 Least intrusive alternative.

When an accused juvenile cannot be unconditionally released, conditional or supervised release that results in the

least necessary interference with the liberty of the juvenile should be favored over more intrusive alternatives.

3.5 Values.

Whenever the interim curtailment of an accused juvenile's freedom is permitted under these standards, the exercise of authority should reflect the following values:

Supreme Court of the United States

No. 91-905

WILLIAM P. BARR, ATTORNEY GENERAL, ET AL., PETITIONERS

v.

JENNY LISETTE FLORES, ET AL.

ORDER ALLOWING CERTIORARI.
Filed March 2, 1992.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

March 2, 1992

U.S. GOVERNMENT PRINTING OFFICE: 1992 – 262 203/47009